the New York court, not applying the doctrine of imputed negligence, allowed a negligent administrator-beneficiary to recover.[13]

RECOVERY OF INTEREST ON ADVANCES BY BROKERS. — Stockbrokers who buy shares for customers on margin almost universally charge them with interest on the amount advanced. In the case of a stringency in the money market the interest so charged is usually in excess of the ordinary legal rate.[1] In a recent article Mr. Harold C. McCullom carefully analyzes the legal relations involved in such transactions in New York, criticizes the theories which have been advanced to sustain the legality of such charges, and defends what he believes to be the correct theory. *Recovery in New York of Interest in Excess of Six Per Cent Paid by Brokers on Money Borrowed to Purchase and Carry Stocks on Margin*, 8 Colum. L. Rev. 281 (April, 1908). Except in the case of call loans, six per cent is the maximum legal rate of interest in New York.[2] The first theory upon which the broker may seek to sustain his right to recover interest in excess of six per cent is that the money advanced is borrowed by the customer from the bank through the agency of the broker, who has agreed for his principal to pay the call rate of interest.[3] Mr. McCullom finds this theory objectionable for several reasons. In the first place the New York decisions have repeatedly regarded the advance as an advance by the broker.[4] Furthermore, the practice seems to be for the broker to lend his own funds, and, since the banks seldom loan more than eighty per cent of the market value of the stock and the margin required of customers is usually only ten per cent of the market value, the broker is in fact called upon to furnish at least a part of the advance necessary to carry the stock.

The second theory regards the excess of interest as a commission.[5] This excess cannot be regarded as a commission paid the broker for getting the loan from the bank, since the New York statute fixes the sum that may be charged in such cases at not over fifty cents on one hundred dollars.[6] It would manifestly be unreasonable to regard this as indemnifying the broker for a commission paid by him to the bank.

The third view is that the advance is really a call loan by the broker to his customer. Mr. McCullom finds that this theory does not fit the case because the New York statute excepting call loans from the usual legal rate applies only to amounts over five thousand dollars and then only when the rate agreed on is in writing.[7] Moreover, call loans must be payable on demand, whereas it would seem that a stockbroker could not proceed to close out a sale on margin until a reasonable time after giving notice to his customer.[8]

The author believes that the fourth theory presents the fewest difficulties, though he admits that it is not fully sustained by the authorities. This theory regards the excess of interest as reimbursement to the broker for an authorized expenditure actually made in obtaining money to loan to the customer. This expenditure, though not expressly authorized, is authorized by custom. What the broker is here doing is to charge the customer with the actual cost of obtaining the money in the money market. Such a charge has been held not to be usurious if the broker does not recover more than he has paid.[9] But the broker does not pretend to charge each customer with the exact rate expended in effecting each particular loan. On the contrary, the excess charged is an approximation to the actual expense incurred; for example, by averaging the

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[13] Lewin *v.* L. V. R. Co., 52 N. Y. App. Div. 69.

[1] Dos Passos, Stockbrokers, 270.
[2] N. Y. Laws of 1879, c. 538; *ibid.* of 1882, c. 237, § 1.
[3] See Smith *v.* Heath, 4 Daly (N. Y.) 123, 126.
[4] Markham *v.* Jaudon, 41 N. Y. 235, 240.
[5] See Robinson *v.* Norris, 6 Hun (N. Y.) 233.
[6] N. Y. Laws of 1895, c. 467.
[7] N. Y. Laws of 1882, c. 237, § 1.
[8] White *v.* Smith, 54 N. Y. 522; Hess *v.* Rau, 95 N. Y. 359.
[9] Thurston *v.* Cornell, 38 N. Y. 281. *Contra,* Jackson *v.* May, 28 Ill. App. 305.

average daily rates paid by the broker for all loans. If, however, this is a reasonable approximation, there can surely be no legal objection to it.

The conclusion that the broker cannot recover over six per cent unless he has laid out over that amount according to his daily average in procuring the funds which he advances seems entirely correct. In any state where the law permits a call rate there should be no difficulty in applying the author's theory and allowing the broker a recovery.[10] But in no case should the broker recover the cost of borrowing money if he paid a usurious rate.[11]

BROKERS, RECOVERY IN NEW YORK OF INTEREST IN EXCESS OF SIX PER CENT PAID BY, ON MONEY BORROWED TO PURCHASE AND CARRY STOCKS ON MARGIN. *Harold C. McCollom.* 8 Colum. L. Rev. 281. See *supra.*

CENTRAL AMERICAN PEACE CONFERENCE OF 1907. *James Brown Scott.* 2 Am. J. of Int. L. 121.

COLLEGE FRATERNITY CHAPTER, THE LEGAL STATUS OF A. *Olcott O. Partridge.* Discussing all the rights and liabilities of members and their methods of handling property. 42 Am. L. Rev. 168.

CONTRIBUTORY NEGLIGENCE OF THE BENEFICIARY AS A BAR TO AN ADMINISTRATOR'S ACTION FOR DEATH. *John H. Wigmore.* 2 Ill. L. Rev. 487. See *supra.*

EMPLOYER, THE LIABILITY OF THE. *W. E. Walz.* Maintaining that a proper application of the doctrine of *respondeat superior* would make employers' liability legislation unnecessary. 1 Me. L. Rev. 4.

EXPRESS COMPANIES, CAN THEY BE COMPELLED TO MAKE PERSONAL DELIVERY? *George W. Payne.* Collecting authorities. 66 Cent. L. J. 275.

HAGUE CONVENTION RESTRICTING THE USE OF FORCE TO RECOVER ON CONTRACT CLAIMS. *George Winfield Scott.* Including a definition of "contract claims." 2 Am. J. of Int. L. 78.

HAGUE PEACE CONFERENCE, THE WORK OF THE SECOND. *James Brown Scott.* 2 Am. J. of Int. L. 1.

HOSTILITIES, CONVENTION RELATIVE TO THE OPENING OF. *Ellery C. Stowell.* Including a collection of all the cases in which hostilities have been begun without a declaration of war. 2 Am. J. of Int. L. 50.

INTERNATIONAL DIFFERENCES, CONVENTION FOR THE PEACEFUL ADJUSTMENT OF. *Amos S. Hershey.* 2 Am. J. of Int. L. 29.

LABOR UNIONS, RECENT AMERICAN DECISIONS AND ENGLISH LEGISLATION AFFECTING. *Chas. R. Darling.* 42 Am. L. Rev. 200.

MORAL DUTY TO AID OTHERS AS A BASIS OF TORT LIABILITY, THE. I. *Francis H. Bohlen.* 56 U. P. L. Rev. 217.

NEUTRAL POWERS AND PERSONS IN LAND WARFARE, HAGUE CONVENTION CONCERNING THE RIGHTS AND DUTIES OF. *Antonio S. de Bustamante.* 2 Am. J. of Int. L. 95.

PATENT APPEALS, THE PROPOSED COURT OF. *Otto Raymond Barnett.* Pointing out the great advantages of such a court. 6 Mich. L. Rev. 441.

PERMISSIVE WASTE BY TENANTS FOR LIFE OR YEARS. *Geo. S. Holmested.* Collecting the English and Canadian cases. 44 Can. L. J. 175.

RAILWAY VALUATION — IS IT A PANACEA? *Jackson E. Reynolds.* Contending among other things that the intrastate rates of an interstate railway should be under federal control. 8 Colum. L. Rev. 265.

SURFACE WATER IN CITIES. — THE RIGHTS AND REMEDIES ON PERMITTING, DIVERTING, INCREASING, AND OBSTRUCTING THE NATURAL FLOW. *John R. Rood.* 6 Mich. L. Rev. 448.

UNION LABOR, DISCRIMINATION AGAINST — LEGAL? *Richard Olney.* Contending that the Adair case was wrong in holding unconstitutional a statute forbidding interstate railways from discharging men because of membership in a union. 42 Am. L. Rev. 161. See 21 HARV. L. REV. 370.

UNION PACIFIC RAILROAD COMPANY, THE GOVERNMENT'S SUIT AGAINST THE. *Edson R. Sunderland.* Contending that the remedy for inefficient railway service lies not in prosecution under the Sherman Act, but in regulation. 6 Mich. L. Rev. 361.

VESTED AND CONTINGENT REMAINDERS. *Albert Martin Kales.* Answering a criticism of a former article by Mr. Kales. 8 Colum. L. Rev. 245. See 20 HARV. L. REV. 243.

WAR ON LAND, THE AMELIORATION OF THE RULES OF. *George B. Davis.* 2 Am. J. of Int. L. 63.

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[10] Stevens *v.* Davis, 44 Mass. 211.

[11] White *v.* Ault, 19 Ga. 551.